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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,899	03/29/2006	Paolo Boschetti Sacco	2507-1108	2074

466 7590 09/19/2008
YOUNG & THOMPSON
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ALEXANDRIA, VA 22314

EXAMINER

EDGAR, RICHARD A

ART UNIT	PAPER NUMBER
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3745

MAIL DATE	DELIVERY MODE
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09/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,899	Applicant(s) BOSCHETTI SACCO, PAOLO	
	Examiner Richard Edgar	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006 under 35 USC 371.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/29/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

The drawings are objected to in accordance with MPEP 1893.03(f) [R-6] because:

(1) FIG. 1 uses brackets, circles, or the like, in association with the reference numbers (see PCT Rule 11.13(e)); and

(2) The height of the reference and view numbers is less than 0.32 cm (see PCT Rule 11.13(h)).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5,732,709 (Tacklind et al. hereinafter).

Tacklind et al. disclose a turbine device capable of use for checking breathing flux of a patient, the device comprising three components each made by a single molding step of plastic (col. 10, lines 33-38); the device comprising a rotor 82 including blades 88 and an integral shaft 84 having beveled tips (90t, 90b); deflector vents (see FIG. 6A, 6b, and 8) formed on opposing surfaces of the chamber parts 74. The device is capable of being thrown-away, and is therefor disposable. Alternatively, the device is made out of plastic as previously cited in col. 10, line 33-38 for low cost advantages, further suggesting disposability.

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Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4,733,570 (Peters hereinafter).

Peters discloses a turbine device capable of use for checking breathing flux of a patient (see *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997)), the device comprising three components each made by a single molding step of plastic (col. 1, lines 55-56; col. 2, lines 6-8; and col. 2, lines 28-29); the device comprising a rotor 22 including blades and an integral shaft having beveled tips 23,24; and inlet and outlet deflectors 16, 27. The device is capable of being thrown-away, and is therefor disposable. Alternatively, the device is made out of plastic as previously cited in col. 1, lines 55-56; col. 2, lines 6-8; and col. 2, lines 28-29 for low cost advantages, further suggesting disposability.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5,732,709 (Tacklind et al. hereinafter).

Tacklind et al., as described above, teaches all of the claimed subject matter of claim 2 except for the bevels being 45-degrees.

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At the time the invention was made it would have been obvious for a person having ordinary skill in the art to bevel the Tacklind et al. tips 90t, 90b at a bevel angle of 45-degrees, as an obvious design choice, for the purpose of optimizing the bearing play between the tips 90t, 90b and their corresponding receptacles 80t, 80b.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4,733,570 (Peters hereinafter).

Peters, as described above, teaches all of the claimed subject matter of claim 2 except for the bevels being 45-degrees.

At the time the invention was made it would have been obvious for a person having ordinary skill in the art to bevel the Peters tips 23, 24 at a bevel angle of 45-degrees, as an obvious design choice, for the purpose of optimizing the bearing play between the tips 23, 24 and their corresponding receptacles 26, 25.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Edgar whose telephone number is (571) 272-4816. The examiner can normally be reached on Monday thru Friday, 7 am- 5 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard Edgar/
Primary Examiner
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